

MARTIN A. ELIOPULOS (Bar No. 149299)
elio@higgslaw.com
HIGGS FLETCHER & MACK LLP
401 West A Street, Suite 2600
San Diego, CA 92101-7910
Telephone: (619) 236-1551
Facsimile: (619) 696-1410

[Proposed] Attorneys for Debtors and
Debtors-in-Possession
BARBARA NILSON and
HENRY NILSON

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

Case No. 23-03619-CL11

BARBARA L. NILSON and
HENRY A. NILSON,

Chapter 11

Debtors and
Debtors-in-
Possession.

RS No.: MAE-001

BARBARA L. NILSON and
HENRY A. NILSON,

**DECLARATION OF JOHN M.
MORRIS, ESQ. IN SUPPORT OF
MOTION FOR RELIEF FROM THE
AUTOMATIC STAY – ACTION IN
NONBANKRUPTCY FORUM
[APPEAL CASE NO.: D081715]**

Movants,

HEARING:

v.

Date: TBD
Time: TBD
Dept.: 5, Rm 318
Judge: Hon. Christopher B. Latham

RYAN ROTHFLEISCH, AND
TIFFANY CARROLL, ASSISTANT
UNITED STATES TRUSTEE,

Respondents.

I, JOHN M. MORRIS, declare as follows:

1. I am, and at all relevant times herein mentioned have been, an attorney duly licensed to practice law in the State of California in all state and federal courts. I am a partner at the law firm of HIGGS FLETCHER & MACK LLP (“HF&M”), proposed attorneys for Debtors and Debtors-in-Possession, BARBARA L. NILSON and HENRY A. NILSON (“Debtors”) and proposed special appellate counsel in the pending matters identified herein.

2. I make this declaration based upon my own personal knowledge and if called upon as a witness I could, and would, testify competently to the contents of this declaration.

3. I am an experienced appellate attorney and have been practicing exclusively in the area of civil writs and appeal continuously since about 1984, three years after I began practice at Higgs Fletcher & Mack in 1981. I have handled hundreds of appeals as lead appellate counsel in state courts throughout California, and have handled dozens of appeal as lead appellate counsel in the Ninth Circuit Court of Appeals. I am the head of the Appellate Department at Higgs Fletcher & Mack and am an active member of the San Diego Appellate Inn of Court.

4. The specific nonbankruptcy action for which Movants seek relief from stay is identified in the Summary of Litigation Chart attached to the Motion as **Exhibit A** and is identified as:

CASE TITLE CASE NO.:	NATURE OF CASE	COURT/ AGENCY	STATUS OF CASE	UPCOMING DEADLINES/ HEARINGS
Nilson v. Rothfleisch APPEAL NO. D081715	Appeal of Phase 1 Statement of Decision	4 th Appellate District Division 1	Filed 9/28/2023. This appeal is pending. The record has been completed, but there is also pending in the Ninth Circuit a motion to <i>consolidate</i> this appeal with the “second” appeal (on the elder abuse issues).	Pending Motion to Consolidate filed 11/17/2023

5. In the above-described nonbankruptcy action, the parties are identified in the Summary of Litigation; Relief from Stay “Cause” Chart attached to the Motion as **Exhibit B**.

///

1 6. Debtors' filed their voluntary Chapter 11 case so as to avoid a
2 dismantling of their Chapter 11 Estate while appealing the adverse rulings and that
3 the same time establishing the liability of the other co-conspirators as a source of
4 funding a plan of reorganization and/or reimbursement post-confirmation.

5 7. As a result, in order for Debtors to successfully reorganize in Chapter
6 11, it is of vital importance for Debtors to continue with the Appeal of the Phase 1
7 Statement of Decision because the appeal will determine whether Ryan established
8 at trial, by clear and convincing evidence, that Henry and Barbara used undue
9 influence to coerce Louise to sign the Sixth Amendment to the Trust. *See Exhibit B.*

10 8. Moreover, success on the appeal would mean that Ryan failed to prove,
11 by clear and convincing evidence, that Henry and Barbara used undue influence to
12 coerce Louise to sign the Sixth Amendment to the Trust which would invalidate the
13 finding of financial elder abuse and necessarily require vacating the judgment arising
14 out of the Phase Two Statement of Decision.

15 I declare under penalty of perjury under the laws of the United States of
16 America that the foregoing is true and correct.

17 Executed on 2nd day of January 2024, at San Diego, California.

18 

19 _____
20 JOHN M. MORRIS
21
22
23
24
25
26
27
28